

Dissenting Views on H. R. 2155, the Sober Borders Act

H.R. 2155, makes it illegal, for an individual to operate a motor vehicle with a drug or alcohol in their body at a land border port of entry in a manner that is punishable under that state's laws. The measure authorizes officers and employees of the Immigration and Naturalization Service (INS) to conduct tests for a drug or alcohol where they have reasonable grounds to believe an individual is under the influence of a drug or alcohol. The measure also states that where an individual does not consent to a chemical or other test of the blood, breath or urine for the purpose of determining the presence or concentration of a drug or alcohol in the blood, breath or urine, or is convicted of having a drug or alcohol in their blood, breath or urine, the officer through the Attorney General, shall notify the State or foreign state that issued the license. In the absence of the driver possessing a license, the officer or employee of the INS, through the Attorney General, shall notify the State or foreign state where the individual resides.

Democratic Concerns

The major problem with this proposal is a matter of policy. At a time when their workload is heavy and the lines and waits for border traffic are already causing huge burdens to border economies, this legislation will impose new duties, unrelated to terrorism, on immigration inspectors at the border. Essentially, H.R. 2155 is enlisting INS officers to enforce state law.

18 U.S.C. section 13 (the Assimilative Crimes Act) currently incorporates state criminal law into federal law, for issues for which there is no applicable federal criminal law, in places in federal jurisdiction such as military bases and, no doubt, ports of entry. So, a criminal offense such as DUI under state law is already also a federal criminal offense in a federal area (areas not in state jurisdictions). This law would extend that by incorporating non-criminal sanctions (e.g., suspension of licenses for failure to agree to a drug test) into federal law. It also seems a questionable use of the admittedly broad authority the INS has at the border to conduct searches, to expand this to blood, breath or urine testing.

During both the Subcommittee markup and the Full Committee markup of this legislation, after being assured that the majority would work with the minority on concerns with the legislation, a Democratic amendment was offered that would require the General Accounting Office to conduct an annual study concerning the exercise of the new authorities by officers and employees of the INS. The study would assemble and analyze the number of times the officers exercised this authority, the race, gender, and national origin of the driver involved, and the results of the exercise of this new authority. The Amendment further directed the General Accounting Office to submit a report to Congress no later than March 31 of each year.

It is important to include this amendment as part of the bill because the legislation raises the potential for abuse of authority to stop and detain individuals at the border. The amendment would ensure that the new authorities granted the officers and employees of the INS to test for the use of alcohol and drugs by a driver at the border is carried out in a efficient, fair, and

equitable manner without targeting any group of people. Most importantly, through the collection of data, the amendment by its very nature would curb any tendency toward abuse. After a vigorous debate during the markup, however, the majority refused to accept the amendment arguing that the measure would place an extreme burden on the officers carrying out the provisions of the amendment. The majority's refusal to include the amendment was surprising in light of the fact that the majority and the minority have worked together in the past to prevent the heinous practice of racial profiling from raising its head. During consideration of H.R. 3767, the Permanent Visa Waiver Program Act (P.L. 106-396), bipartisan action was taken to include language in Section 206 and 207 of the bill to ensure that race, gender or disability would not be considered as criteria for the calculation of visa refusal rates. The measure further enacted reporting requirements on the Secretary of State to ensure that this provision was followed. This in combination with other problems causes us to oppose this measure and we urge our colleagues to oppose this measure when it comes to the floor -- particularly if it comes to the floor under the suspension calendar.

John Conyers, Jr.
Sheila Jackson Lee